

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORLANDO OLAIS-ROCHA,

Defendant.

No. CR11-159RAJ

ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE

I. INTRODUCTION

This matter comes before the court on Defendant Orlando Olais-Rocha's *pro se* motion requesting a reduction in his sentence under 18 U.S.C. § 3582(c)(2), based on Amendments 782 and 788 to the United States Sentencing Guidelines ("USSG") (Dkt. #513). Plaintiff United States of America opposes the motion (Dkt. #528). The court has thoroughly considered the parties' briefing, the relevant record, and the applicable law. Being fully advised,¹ the court DENIES Mr. Olais-Rocha's motion for the reasons stated below.

II. BACKGROUND

Defendant Orlando Olais-Rocha was sentenced by this court on September 7, 2012, following his plea of guilty to conspiracy to distribute controlled substances,

¹ No party has requested it, and the court finds oral argument to be unnecessary.

1 conspiracy to engage in money laundering, and possession of a firearm in
2 furtherance of a drug trafficking crime.

3 The amount of methamphetamine and heroin involved in Defendant's offense
4 was equivalent to 89,000 kilograms of marijuana. Based on the 2011 edition of the
5 Sentencing Guidelines, applicable to the date of the offenses, the appropriate Base
6 Offense Level for the drug offense was 38. USSG § 2D1.1(c)(1). Pursuant to
7 various enhancement provisions of USSG § 2D1.1, Defendant was then assessed
8 upward adjustments related to the drug offense for: importation of
9 methamphetamine; maintaining premises for the purpose of distributing controlled
10 substances; employing a pregnant person in the distribution of controlled substances;
11 and leadership. This resulted in an adjusted offense level of 48 for the drug offense.
12 Defendant's money laundering conviction added a 2-level enhancement, and then
13 Defendant was awarded full credit for acceptance of responsibility, resulting in an
14 offense level subtotal of Level 47.

15 The sentencing table at USSG Ch. 5 Pt. A only goes up to Level 43, but the
16 commentary directs that "[a]n offense level of more than 43 is to be treated as an
17 offense level of 43." At Total Offense Level 43 and Criminal History Category I,
18 Defendant's resulting sentencing range was life, plus 60 months consecutive for the
19 gun offense. This is the sentencing range adopted by the court. The court then
20 varied downward from that range pursuant to the parties' negotiated
21 recommendation in the Plea Agreement and imposed a sentence of 144 months'
22 imprisonment for the drug and money laundering offenses, concurrent, plus 60
23 months consecutive for the gun offense, for a total sentence of imprisonment of 204
24 months.

25 **III. DISCUSSION**

26 **A. Legal Standard**

Amendment 782 to the United States Sentencing Guidelines, which became
effective November 1, 2014, lowered the penalties for most drug offenses by

1 reducing most base offense levels contained in the USSG § 2D1.1 Drug Quantity
2 Table by two levels, and making other related adjustments to this Guideline. Along
3 with Amendment 782, the Sentencing Commission adopted Amendment 788, which
4 decreed that Amendment 782 may be applied retroactively to lower the sentences of
5 previously sentenced inmates. At issue in the instant motion is whether this court has
6 authority to reduce Defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).

7 In order to qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2), two
8 conditions must be met: (1) the Defendant must have been sentenced to a term of
9 imprisonment based on a sentencing range that has been lowered by a retroactively
10 applicable Guidelines amendment; and (2) the sentence reduction sought must be
11 consistent with the Sentencing Commission's applicable policy statements. *United*
12 *States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam). A district court
13 does not have jurisdiction to reduce the Defendant's sentence unless both criteria are
14 met. *See United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009).

15 **B. Defendant's Motion**

16 Following passage of the recent amendments to USSG § 2D1.1, Defendant's
17 applicable sentencing range for the combined drug and money laundering offenses
18 has not been reduced; it remains life. This is because even though his base offense
19 level is reduced from Level 38 to Level 36, and, leaving all other adjustments in
20 place, his new offense level subtotal is correspondingly reduced from Level 47 to
21 Level 45, this still exceeds the high end of the Sentencing Table. Accordingly, his
22 newly-reduced offense level subtotal continues to be treated as Level 43, as directed
23 by USSG Ch. 5, Pt. A, comment. n. 2. Accordingly, neither his applicable Total
24 Offense Level nor his corresponding sentencing range has been reduced by the
25 amendments.


26 Section 1B1.10 explicitly directs: "the court shall substitute only the
amendments listed in subsection (d) for the corresponding guideline provisions that

1 were applied when the defendant was sentenced and shall leave all other guideline
2 application decisions unaffected.” USSG § 1B1.10 (b)(1). When this is done,
3 Defendant’s applicable sentencing range is not reduced. Accordingly, Defendant’s
4 sentencing range has not been lowered by a retroactively applicable Guidelines
5 amendment, and the district court lacks jurisdiction to reduce the defendant’s
6 sentence. *Wesson*, 583 F.3d at 730.

7 8 IV. CONCLUSION

9 For the above reasons, Defendant Orlando Olais-Rocha’s *pro se* Motion to
10 Reduce Sentence (Dkt. #513) is DENIED.

11 DATED this 8th day of June, 2015.

12 
13 The Honorable Richard A. Jones
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26